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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

JAMES BRADY, SARAH CAVANAGH, and  
CHRISTOPHER SULIT, individually and on behalf  
of all others similarly situated,

Plaintiffs,

v.

DELOITTE & TOUCHE LLP, a limited liability  
partnership; DELOITTE TAX LLP; and DOES 1-10,  
inclusive,

Defendants.

Case No. C-08-00177-SI

**DEFENDANT DELOITTE &  
TOUCHE LLP'S ANSWER TO  
PLAINTIFFS' SECOND AMENDED  
COMPLAINT**

1 Defendant Deloitte & Touche LLP ( "Defendant") hereby answers the Second Amended  
2 Complaint of plaintiffs James Brady, Sarah Cavanagh, and Christopher Sulit ("Plaintiffs) in the  
3 above-captioned action and admits, denies and avers as follows:

4 **CLASS ACTION COMPLAINT**

5 1. Defendant admits that it is a limited liability partnership, that it has employed and  
6 continues to employ certain salaried workers in its Audit line of services who were not licensed or  
7 certified by the State of California, and that exempt employees were not paid overtime from January  
8 of 2004 to the present. Otherwise, Paragraph 1 contains conclusions of law as opposed to allegations  
9 of fact and as such, no answer is required. Except as expressly admitted herein, Defendant denies  
10 each and every factual allegation contained in Paragraph 1.

11 2. Paragraph 2 contains conclusions of law as opposed to allegations of fact and as such,  
12 no answer is required. To the extent Paragraph 2 purports to contain any allegations of fact,  
13 Defendant denies those allegations.

14 **JURISDICTION AND VENUE**

15 3. Paragraph 3 contains conclusions of law as opposed to allegations of fact and as such,  
16 no answer is required. To the extent Paragraph 3 purports to contain any allegations of fact,  
17 Defendant denies those allegations.

18 4. Defendant does not have sufficient information to admit or deny that any Plaintiff is a  
19 citizen of California. Defendant admits that it is a limited liability partnership organized under the  
20 laws of the State of Delaware and that it has its principal place of business in New York. Otherwise,  
21 Paragraph 4 contains conclusions of law as opposed to allegations of fact and as such, no answer is  
22 required. Except as expressly admitted herein, Defendant denies each and every factual allegation  
23 contained in Paragraph 4.

24 5. Defendant admits that it is a limited liability partnership and that it has an office in  
25 San Francisco. Otherwise, Paragraph 5 contains conclusions of law as opposed to allegations of fact  
26 and as such, no answer is required. Except as expressly admitted herein, Defendant denies each and  
27 every factual allegation contained in Paragraph 5.  
28

**PARTIES**

6. Defendant admits that Plaintiffs worked for Defendant during the time period of January 2004 and the present. Defendant does not have sufficient information to admit or deny that any Plaintiff is a resident of California. Except as expressly admitted herein, Defendant denies each and every factual allegation contained in Paragraph 6.

7. Paragraph 7 contains conclusions of law as opposed to allegations of fact and as such, no answer is required. To the extent Paragraph 7 purports to contain any allegations of fact, Defendant denies those allegations.

8. Paragraph 8 contains conclusions of law as opposed to allegations of fact and as such, no answer is required. To the extent Paragraph 8 purports to contain any allegations of fact, Defendant denies those allegations.

9. Defendant admits that it is a limited liability partnership, that it conducts business in the State of California, and that it is a public accounting firm. Except as expressly admitted herein, Defendant denies each and every factual allegation contained in Paragraph 9.

10. Paragraph 10 contains conclusions of law as opposed to allegations of fact and as such, no answer is required. To the extent Paragraph 10 purports to contain any allegations of fact, Defendant denies those allegations.

11. Defendant admits that it is a limited liability partnership conducting business in the State of California. Otherwise, Paragraph 11 contains conclusions of law as opposed to allegations of fact and as such, no answer is required. Except as expressly admitted herein, Defendant denies each and every factual allegation contained in Paragraph 11.

12. Paragraph 12 contains conclusions of law as opposed to allegations of fact and as such, no answer is required. To the extent Paragraph 12 purports to contain any allegations of fact, Defendant denies those allegations.

13. Paragraph 13 contains conclusions of law as opposed to allegations of fact and as such, no answer is required. To the extent Paragraph 13 purports to contain any allegations of fact, Defendant denies those allegations.

14. Paragraph 14 contains conclusions of law as opposed to allegations of fact and as such, no answer is required. To the extent Paragraph 14 purports to contain any allegations of fact, Defendant denies those allegations.

15. Paragraph 15 contains conclusions of law as opposed to allegations of fact and as such, no answer is required. To the extent Paragraph 15 purports to contain any allegations of fact, Defendant denies those allegations.

16. Paragraph 16 contains conclusions of law as opposed to allegations of fact and as such, no answer is required. To the extent Paragraph 16 purports to contain any allegations of fact, Defendant denies those allegations.

## ADDITIONAL FACTS

17. Defendant admits that, during the time period of January 2004 and the present, it employed certain salaried workers in its Audit line of service who were not licensed or certified by the State of California. Except as expressly admitted herein, Defendant denies each and every factual allegation contained in Paragraph 17.

18. Defendant admits that it classified Plaintiffs as exempt employees and that it classified and classifies certain salaried workers in its Audit line of services as exempt employees. Except as expressly admitted herein, Defendant denies each and every factual allegation contained in Paragraph 18.

19. Defendant admits that Plaintiffs may have worked more than 8 hours in a day and/or 40 hours in a week and were not paid overtime compensation for those hours. Otherwise, Paragraph 19 contains conclusions of law as opposed to allegations of fact and as such, no answer is required. Except as expressly admitted herein, Defendant denies each and every factual allegation contained in Paragraph 19.

20. Paragraph 20 contains conclusions of law as opposed to allegations of fact and as such, no answer is required. To the extent Paragraph 20 purports to contain any allegations of fact, Defendant denies those allegations.

**CLASS ALLEGATIONS**

21. Paragraph 21 contains conclusions of law as opposed to allegations of fact and as such, no answer is required. To the extent Paragraph 21 purports to contain any allegations of fact, Defendant denies those allegations.

22. Paragraph 22 contains conclusions of law as opposed to allegations of fact and as such, no answer is required. To the extent Paragraph 22 purports to contain any allegations of fact, Defendant denies those allegations.

23. Paragraph 23 contains conclusions of law as opposed to allegations of fact and as such, no answer is required. To the extent Paragraph 23 purports to contain any allegations of fact, Defendant denies those allegations.

24. Paragraph 24 contains conclusions of law as opposed to allegations of fact and as such, no answer is required. To the extent Paragraph 24 purports to contain any allegations of fact, Defendant denies those allegations.

25. Paragraph 25 contains conclusions of law as opposed to allegations of fact and as such, no answer is required. To the extent Paragraph 25 purports to contain any allegations of fact, Defendant denies those allegations.

26. Paragraph 26 contains conclusions of law as opposed to allegations of fact and as such, no answer is required. To the extent Paragraph 26 purports to contain any allegations of fact, Defendant denies those allegations.

27. Paragraph 27 contains conclusions of law as opposed to allegations of fact and as such, no answer is required. To the extent Paragraph 27 purports to contain any allegations of fact, Defendant denies those allegations.

28. Paragraph 28 contains conclusions of law as opposed to allegations of fact and as such, no answer is required. To the extent Paragraph 28 purports to contain any allegations of fact, Defendant denies those allegations.

29. Paragraph 29 contains conclusions of law as opposed to allegations of fact and as such, no answer is required. To the extent Paragraph 29 purports to contain any allegations of fact, Defendant denies those allegations.

30. Paragraph 30 contains conclusions of law as opposed to allegations of fact and as such, no answer is required. To the extent Paragraph 30 purports to contain any allegations of fact, Defendant denies those allegations.

31. Paragraph 31 contains conclusions of law as opposed to allegations of fact and as such, no answer is required. To the extent Paragraph 31 purports to contain any allegations of fact, Defendant denies those allegations.

32. Defendant admits that Plaintiffs were employed by Defendant as salaried exempt employees in Defendant's Audit line of services but were not licensed or certified by the state of California and were not paid overtime compensation. Otherwise, Paragraph 32 contains conclusions of law as opposed to allegations of fact and as such, no answer is required. Except as expressly admitted herein, Defendant denies each and every factual allegation contained in Paragraph 32.

33. Paragraph 33 contains conclusions of law as opposed to allegations of fact and as such, no answer is required. To the extent Paragraph 33 purports to contain any allegations of fact, Defendant denies those allegations.

34. Paragraph 34 contains conclusions of law as opposed to allegations of fact and as such, no answer is required. To the extent Paragraph 34 purports to contain any allegations of fact, Defendant denies those allegations.

35. Paragraph 35 contains conclusions of law as opposed to allegations of fact and as such, no answer is required. To the extent Paragraph 35 purports to contain any allegations of fact, Defendant denies those allegations.

### FIRST CAUSE OF ACTION

36. Defendant incorporates its answers to Paragraph numbers 1 through 35 as and for its answer to Paragraph 36.

37. Paragraph 37 contains conclusions of law as opposed to allegations of fact and as such, no answer is required. To the extent Paragraph 37 purports to contain any allegations of fact, Defendant denies those allegations.

38. Defendant admits that Plaintiffs and other exempt employees were not paid overtime compensation. Otherwise, Paragraph 38 contains conclusions of law as opposed to allegations of fact

1 and as such, no answer is required. Except as expressly admitted herein, Defendant denies each and  
2 every factual allegation contained in Paragraph 38.

3 39. Defendant admits that Plaintiffs and other exempt employees may have worked more  
4 than 8 hours in a day and/or 40 hours in a week and were not paid overtime compensation for those  
5 hours. Except as expressly admitted herein, Defendant denies each and every factual allegation  
6 contained in Paragraph 39.

7 40. Paragraph 40 contains conclusions of law as opposed to allegations of fact and as  
8 such, no answer is required. To the extent Paragraph 40 purports to contain any allegations of fact,  
9 Defendant denies those allegations.

10 41. Paragraph 41 contains conclusions of law as opposed to allegations of fact and as  
11 such, no answer is required. To the extent Paragraph 41 purports to contain any allegations of fact,  
12 Defendant denies those allegations.

13 42. Paragraph 42 contains conclusions of law as opposed to allegations of fact and as  
14 such, no answer is required. To the extent Paragraph 42 purports to contain any allegations of fact,  
15 Defendant denies those allegations.

16 43. Paragraph 43 contains conclusions of law as opposed to allegations of fact and as  
17 such, no answer is required. To the extent Paragraph 43 purports to contain any allegations of fact,  
18 Defendant denies those allegations.

19 44. Paragraph 44 contains conclusions of law as opposed to allegations of fact and as  
20 such, no answer is required. To the extent Paragraph 44 purports to contain any allegations of fact,  
21 Defendant denies those allegations.

22 **SECOND CAUSE OF ACTION**

23 45. Defendant incorporates its answers to Paragraph numbers 1 through 44 as and for its  
24 answer to Paragraph 45.

25 46. Paragraph 46 contains conclusions of law as opposed to allegations of fact and as  
26 such, no answer is required. To the extent Paragraph 46 purports to contain any allegations of fact,  
27 Defendant denies those allegations.  
28

1           47. Paragraph 47 contains conclusions of law as opposed to allegations of fact and as  
2 such, no answer is required. To the extent Paragraph 47 purports to contain any allegations of fact,  
3 Defendant denies those allegations.

4           48. Paragraph 48 contains conclusions of law as opposed to allegations of fact and as  
5 such, no answer is required. To the extent Paragraph 48 purports to contain any allegations of fact,  
6 Defendant denies those allegations.

7           49. Paragraph 49 contains conclusions of law as opposed to allegations of fact and as  
8 such, no answer is required. To the extent Paragraph 49 purports to contain any allegations of fact,  
9 Defendant denies those allegations.

### 10                                   **THIRD CAUSE OF ACTION**

11           50. Defendant incorporates its answers to Paragraph numbers 1 through 49 as and for its  
12 answer to Paragraph 50.

13           51. Paragraph 51 contains conclusions of law as opposed to allegations of fact and as  
14 such, no answer is required. To the extent Paragraph 51 purports to contain any allegations of fact,  
15 Defendant denies those allegations.

16           52. Paragraph 52 contains conclusions of law as opposed to allegations of fact and as  
17 such, no answer is required. To the extent Paragraph 52 purports to contain any allegations of fact,  
18 Defendant denies those allegations.

19           53. Paragraph 53 contains conclusions of law as opposed to allegations of fact and as  
20 such, no answer is required. To the extent Paragraph 53 purports to contain any allegations of fact,  
21 Defendant denies those allegations.

22           54. Paragraph 54 contains conclusions of law as opposed to allegations of fact and as  
23 such, no answer is required. To the extent that Paragraph 54 purports to contain any allegations of  
24 fact, Defendant denies those allegations.

### 25                                   **FOURTH CAUSE OF ACTION**

26           55. Defendant incorporates its answers to Paragraph numbers 1 through 54 as and for its  
27 answer to Paragraph 55.



56. Paragraph 56 contains conclusions of law as opposed to allegations of fact and as such, no answer is required. To the extent that Paragraph 56 purports to contain any allegations of fact, Defendant denies those allegations.

57. Defendant lacks sufficient knowledge and information to form a belief as to the truth or falsity of those allegations related to whether Plaintiffs or other putative class members secreted or absented themselves from Defendant or refused to accept earned, unpaid wages. Otherwise, Paragraph 57 contains conclusions of law as opposed to allegations of fact and as such, no answer is required. Except as expressly admitted herein, Defendant denies each and every factual allegation contained in Paragraph 57.

58. Paragraph 58 contains conclusions of law as opposed to allegations of fact and as such, no answer is required. To the extent that Paragraph 58 purports to contain any allegations of fact, Defendant denies those allegations.

59. Paragraph 59 contains conclusions of law as opposed to allegations of fact and as such, no answer is required. To the extent that Paragraph 59 purports to contain any allegations of fact, Defendant denies those allegations.

## **FIFTH CAUSE OF ACTION**

60. Defendant incorporates its answers to Paragraph numbers 1 through 59 as and for its answer to Paragraph 60.

61. Paragraph 61 contains conclusions of law as opposed to allegations of fact and as such, no answer is required. To the extent that Paragraph 61 purports to contain any allegations of fact, Defendant denies those allegations.

62. Paragraph 62 contains conclusions of law as opposed to allegations of fact and as such, no answer is required. To the extent that Paragraph 62 purports to contain any allegations of fact, Defendant denies those allegations.

63. Paragraph 63 contains conclusions of law as opposed to allegations of fact and as such, no answer is required. To the extent that Paragraph 63 purports to contain any allegations of fact, Defendant denies those allegations.

64. Paragraph 64 contains conclusions of law as opposed to allegations of fact and as such, no answer is required. To the extent that Paragraph 64 purports to contain any allegations of fact, Defendant denies those allegations.

65. Paragraph 65 contains conclusions of law as opposed to allegations of fact and as such, no answer is required. To the extent that Paragraph 65 purports to contain any allegations of fact, Defendant denies those allegations.

66. Defendant denies each and every averment contained in the Second Amended Complaint not expressly admitted herein.

WHEREFORE, Defendant expressly denies that Plaintiffs are entitled to any relief, including but not limited to the relief sought by Plaintiffs in the Second Amended Complaint and prays for judgment as hereinafter set forth.

#### **FIRST SEPARATE AND ADDITIONAL DEFENSE**

##### **(Failure to State a Claim)**

The Second Amended Complaint, and each purported cause of action contained therein, fails to state a claim upon which relief may be granted.

#### **SECOND SEPARATE AND ADDITIONAL DEFENSE**

##### **(Lack of Standing)**

The Second Amended Complaint, and each purported cause of action contained therein, is barred to the extent that Plaintiffs lack standing to assert these matters against Defendant.

#### **THIRD SEPARATE AND ADDITIONAL DEFENSE**

##### **(Class Certification Requirements Not Met)**

This action does not meet the requirements for class action treatment under Rule 23 of the Federal Rules of Civil Procedure, and Plaintiffs cannot prosecute it on behalf of the putative class they purport to represent or on behalf of the general public.

#### **FOURTH SEPARATE AND ADDITIONAL DEFENSE**

##### **(Violation of Due Process)**

The Second Amended Complaint, and each purported cause of action contained therein, violates Defendant's right to due process under the United States Constitution, the California

1 Constitution, and other California law, including but not limited to by improperly enlarging the  
2 powers of the judiciary to award restitution or damages on behalf of the general public without any  
3 individualized showing of injury, and violating the separation of powers doctrine by vesting private  
4 individuals with power held by the executive branch.

5 **FIFTH SEPARATE AND ADDITIONAL DEFENSE**

6 **(Statute of Limitations)**

7 The Second Amended Complaint, and each purported cause of action contained therein, is  
8 barred to the extent Plaintiffs or any of the members of the putative class they purport to represent  
9 seek relief for conduct occurring outside the applicable statutes of limitation, as set forth in Code of  
10 Civil Procedure sections 338, 339 and 340, and Business & Professions Code section 17208, among  
11 others.

12 **SIXTH SEPARATE AND ADDITIONAL DEFENSE**

13 **(Good Faith)**

14 Neither Plaintiffs nor the members of the putative class they purport to represent are entitled  
15 to any penalty award under any California Labor Code provision because at all times relevant and  
16 material herein, Defendant acted in good faith and had reasonable grounds for believing that it did not  
17 violate the wage provisions of the California Labor Code.

18 **SEVENTH SEPARATE AND ADDITIONAL DEFENSE**

19 **(Good Faith Dispute)**

20 Neither Plaintiffs nor the members of the putative class they purport to represent are entitled  
21 to any penalty award under any California Labor Code provision because at all times relevant and  
22 material herein, a good faith dispute existed and exists regarding whether wages and/or overtime are  
23 due.

24 **EIGHTH SEPARATE AND ADDITIONAL DEFENSE**

25 **(Adequate Remedy at Law)**

26 Neither Plaintiffs nor the members of the putative class they purport to represent are entitled  
27 to injunctive or other equitable relief because they and the persons they seek to represent have  
28 adequate remedies at law.

**NINTH SEPARATE AND ADDITIONAL DEFENSE****(Paid All Sums)**

The Second Amended Complaint, and each purported cause of action contained therein, is barred because Defendant has paid Plaintiffs and the members of the putative class they purport to represent all sums due them.

**TENTH SEPARATE AND ADDITIONAL DEFENSE****(Failure to State Claim for Punitive Damages)**

The Second Amended Complaint, and each purported cause of action contained therein, fails to state a cause of action for punitive damages, and any award of punitive damages against Defendant in this action would violate Defendant's rights under the United States and California Constitutions.

**ELEVENTH SEPARATE AND ADDITIONAL DEFENSE****(Exempt from Overtime)**

The Second Amended Complaint, and each purported cause of action contained therein, is barred because Plaintiffs and the members of the putative class they purport to represent were and are exempt from overtime and other provisions of the California Labor Code and applicable regulations and the Wage Order promulgated thereunder.

**TWELFTH SEPARATE AND ADDITIONAL DEFENSE****(Waiver)**

The Second Amended Complaint, and each purported cause of action contained therein, is barred because Plaintiffs or members of the putative class they purport to represent by their actions have waived their right to recovery.

**THIRTEENTH SEPARATE AND ADDITIONAL DEFENSE****(Laches)**

The Second Amended Complaint, and each purported cause of action contained therein, is barred because Plaintiffs or members of the putative class they purport to represent inexcusably and unreasonably delayed the filing of this action, causing prejudice to Defendant.

**FOURTEENTH SEPARATE AND ADDITIONAL DEFENSE****(Unclean Hands)**

The Second Amended Complaint, and each purported cause of action contained therein, is barred to the extent Plaintiffs or members of the putative class they purport to represent have been guilty of improper conduct connected to the matters alleged in the Second Amended Complaint.

**FIFTEENTH SEPARATE AND ADDITIONAL DEFENSE****(Failure to Mitigate)**

Any damages should be reduced to the extent the Plaintiffs or the members of the putative class they purport to represent failed to mitigate them.

**SIXTEENTH SEPARATE AND ADDITIONAL DEFENSE****(Offset)**

Any damages claimed by Plaintiffs or the members of the putative class they purport to represent should be reduced to the extent they are subject to an offset, representing amounts improperly obtained from Defendant or which would constitute unjust enrichment of Plaintiffs or the members of the putative class they purport to represent.

**SEVENTEENTH SEPARATE AND ADDITIONAL DEFENSE****(Paid All Sums)**

The Second Amended Complaint, and each purported cause of action contained therein, is barred because Defendant has paid Plaintiffs and the members of the putative class they purport to represent all sums due them.

**EIGHTEENTH SEPARATE AND ADDITIONAL DEFENSE****(De Minimis Doctrine)**

Some or all of the disputed time for which Plaintiffs or members of the putative class they purport to represent seek recovery of wages purportedly owed is not compensable pursuant to the *de minimis* doctrine.

**NINETEENTH SEPARATE AND ADDITIONAL DEFENSE****(Misperformance of Job Duties)**

The Second Amended Complaint, and each purported cause of action contained there, is barred to the extent Plaintiffs or members of the putative class they purport to represent misperformed his or her respective duties, and failed to perform those duties which Defendant realistically expected each to perform, pursuant to California Labor Code section 2857.

**TWENTIETH SEPARATE AND ADDITIONAL DEFENSE****(Penalties Unconstitutional)**

Plaintiffs and the members of the putative class they purport to represent are not entitled to any penalty award under the California Labor Code to the extent the penalty provisions of the applicable Labor Code sections invoked establish penalties that are confiscatory and are disproportionate to any damage or loss incurred as a result of Defendant's conduct, and therefore, are unconstitutional under the Eight Amendment of the United States Constitution and Article I, section VII of the California Constitution.

Defendant reserves the right to amend its Answer to allege any additional defenses as may later become available or apparent. Further, Defendant reserves the right to withdraw any defenses that it subsequently determines to be inapplicable. Nothing stated in the foregoing defenses constitutes a concession that Defendant bears any burden of proof on any issue on which it would not otherwise bear such burden.

WHEREFORE, Defendant prays for judgment as follows:

1. That Plaintiffs and the members of the putative class they purport to represent take nothing by virtue of this action;
2. That all requests for equitable relief of any kind be denied;
3. That judgment be entered in favor of Defendant and against Plaintiffs, and any class the Court certifies, and the action be dismissed with prejudice;
4. That Defendant be awarded costs of suit and attorneys' fees incurred herein; and
5. That Defendant be awarded such other and further relief as the Court may deem proper.

1 Dated: August 4, 2008

LINDA E. SHOSTAK  
JAMES E. BODDY, JR.  
KATHRYN M. DAVIS  
MORRISON & FOERSTER LLP

5 By: s/Linda E. Shostak

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